REMARKS

Applicants respectfully request reconsideration of the present application.

CLAIMS STATUS

Applicants have cancelled claim 23 without prejudice or disclaimer.

Applicants have amended claims 15, 17 and 19-20 to present the claimed invention in a clearer. Support for the amendment may be found throughout the application as filed and, more specifically, in the original claims 1-14. No new matter has been added.

After the amendment, claims 15-22 and 24-28 are pending.

Applicants thank the Examiner for the September 4th telephonic interview, the subject matter of which may be gleaned from the present response.

REJECTION UNDER 35 U.S.C. § 102(b)

Claims 15 and 19-27 stand rejected as anticipated by US patent No. 5,262,163 (the '163 patent). Applicants respectfully traverse the rejection.

APPLICANTS' COMMENTS ON THE '163 PATENT

The '163 patent "relates to a process for preparing the nonsaponifiable matter of avocado oil from the fruit, wherein the nonsaponifiable matter of avocado oil is separated and its content in one of its fractions termed H is improved by carrying out the heat treatment of the fruit before extracting the oil at a temperature of 80° C to 120° C for not less than four hours," see abstract, underlining added.

The '163 patent states that the "subject of the invention is in particular a process for preparing the nonsaponifiable matter of avocado oil from the fruit enabling its content in one of the fractions termed H to be improved", column 1, lines 7-10, "in order to obtain a nonsaponifiable matter of avocados rich in fraction H, the Applicant Company has developed the process which is the subject of the present invention," see column 1, lines 14-17, and that in "the process according to the invention, the nonsaponifiable matter is separated from the

avocado oil and the quality of this nonsaponifiable matter is improved by carrying out the heat treatment of the fruit before extracting the oil at a temperature of 80° C to 120° C for not less than four hours, advantageously not less than 10 hours and preferably for 24 to 48 hours," column 1, lines 24-30.

Applicants respectfully submit that the rest of the '163 patent and, in particular, the disclosure in column 2, lines 38-55, should be read in context with the cited above unambiguous statements that the subject of the '163 patent is a process for obtaining a nonsaponifiable matter of avocado and the process involves the heat treatment of the avocado fruit before extracting the oil.

Applicants respectfully submit that the disclosure in column 2, lines 38-55 relates the process of the '163 patent specified in the abstract and in column 1, lines 24-30.

Column 2, lines 38-46

The paragraph in column 2, lines 38-46, states "the preliminary heat treatment according to the present invention", which unambiguously refers to the heat treatment performed before extracting the oil as specified.

Column 2, lines 47-52

Although the paragraph in column 2, lines 47-52, states "the fruit oil, previously dehydrated and heat treated" without specifying whether the fruit oil was dehydrated and heat treated as 1) a part of an avocado fruit or 2) in an extracted form, Applicants respectfully submit that the interpretation 1), i.e. that the fruit oil was dehydrated and heat treated as part of an avocado fruit, is the only possible interpretation of this passage in the context of the '163 patent's disclosure for the following reasons:

1) the paragraph in column 2, lines 47-52, literally repeats the heat treatment conditions of the process specified in the abstract and in column 1, lines 24-30;

2) the use of "dehydrated" and "heat treated" within a single phrase in column 2, line 48, and the fact that the dehydration can be applied only to the fruit and not to the extracted oil imply that the heat treatment is applied also to the fruit and not to the extracted oil;

3) the rest of the '163 patent does not mention specifically heat treatment of the extracted oil, while the heat treatment of the fruit is unambiguously stated as the core of the process of the '163 patent in the abstract and in column 1, line 24-30.

Column 2, lines 53-55

The heat treatment in the paragraph in column 2, lines 53-55, refers to the heat treatment of the paragraph in column 2, lines 47-52, which, as Applicants explained above, can be interpreted only as a heat treatment of the fruit oil as a part of the fruit and not a heat treatment of the fruit oil in an extracted form.

THE '163 PATENT DOES NOT TEACH AT LEAST ONE ELEMENT OF THE CLAIMED INVENTION

Applicants' claims recite a process for obtaining a furan lipid-rich unsaponifiable material from avocado. The process includes 1) dehydrating avocado at a temperature between -50°C and 75 °C; 2) then, extracting oil from the dehydrated avocado; and 3) then, subjecting the extracted oil to heat treatment at a temperature from 80°C to 150°C, before or after the step of concentrating the extracted oil.

Applicants respectfully submit that the '163 patent does not teach at least one element of the claimed process. For example, the '163 patent does not teach heat treatment of the extracted oil at a temperature from 80°C to 150°C, i.e. heat treatment at a temperature from 80°C to 150°C performed after extracting the oil. Quite contrary to the claimed process, the '163 patent teaches heat treatment at a temperature 80°C to 120 °C before extracting the oil, see Applicants' comments above.

As the '163 patent does not teach all the elements of the claimed invention, Applicants request withdrawal of the rejection.

Applicants submit that the PTO cites column 1, lines 62 and 63, and column 2, lines 5-9 and 53-55 as the most relevant parts of the '163 patent, see Office Action, page 2, last sentence. Although Applicants do not completely understand the PTO's logic, Applicants believe that the PTO tries to combine the following passages of the '163 to arrive at the claimed process: "drying the fruits beforehand before extracting them", column 2, lines 5-6, and "the heat treatment may be preceded by dehydration of the fruit", column 2, lines 53-54.

In response, Applicants submit that the heat treatment on line 53 should be interpreted in the context with the rest of the '163 patent's disclosure. As Applicants explained above the only reasonable interpretation of the heat treatment on line 53 is as a heat treatment performed before the extraction of the oil.

Applicants further submit that even if, for argument's sake, the "drying the fruits beforehand before extracting them" and "the heat treatment may be preceded by dehydration of the fruit" statements were taken out of the context of the '163 patent and combined, they would still not have taught all the elements of the claimed process, which recites a) a sequence of dehydrating of the fruit, then extracting oil from the dehydrated fruit and then heat treating the extracted oil and b) specific temperature ranges in each of the dehydration and heat treatment steps.

Applicants respectfully submit that the claimed process is non-obvious over the '163 patent because one or ordinary skill in the art would not have a required motivation and a required reasonable expectation of success to modify the process of the '163 patent to arrive at the claimed process as such modification will change a principle of operation of the process of the '163 patent, the essence of which is performing heat treatment at 80°C to 120°C before extracting the oil.

DOUBLE PATENTING REJECTIONS

Claim 23 stands rejected under 35 U.S.C. § 101 as claiming the same invention as claim 8 of U.S. patent No. 6,994,875. Applicants believe that the present amendment obviates the rejection.

Claims 15-28 stand rejected on the ground of non-statutory obviousness-type double patent over claims 1-13 of U.S. patent No. 6,994,875. Applicants have enclosed with the present a Terminal disclaimer over U.S. patent No. 6,994,875. Accordingly, Applicants request withdrawal of the rejection.

CONCLUSION

Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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